

OFFICE OF THE CLERK
**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

Robert H. Jackson
United States Courthouse
2 Niagara Square
Buffalo, New York 14202
Phone: 716-551-1700
Fax: 716-551-1705

MARY C. LOEWENGUTH
CLERK OF COURT

PATRICK J. HEALY
CHIEF DEPUTY CLERK

Kenneth B. Keating
Federal Building
100 State Street, Rm 6070
Rochester, New York 14614
Phone: 585-613-4000
Fax: 585-613-4035

November 8, 2021

Michael Anthony Callinan
Bruno, Gerbino & Soriano, LLP
445 Broad Hollow Road
Suite 220
Melville, NY 11747

Ryan Craig Goldberg
Rivkin Radler LLP
926 RXR Plaza
Uniondale, NY 11556

Michael P. Versichelli
Rivkin, Radler LLP
926 RXR Plaza
Uniondale, NY 11556

Vincent Frank Gerbino
Bruno, Gerbino & Soriano, LLP
445 Broad Hollow Road
Suite 220
Melville, NY 11747

Charles Howard Horn
Russell Friedman &
Associates Inc
3000 Marcus Ave
Suite 2E3
Lake Success, NY 11042

Jeanne M. Vinal
Vinal & Vinal
193 Delaware Avenue
Buffalo, NY 14202

Max Gershenoff
Rivkin, Radler LLP
926 RXR Plaza
Uniondale, NY 11556

Barry I. Levy
Rivkin, Radler LLP
926 RXR Plaza
Uniondale, NY 11556

In re: Zenith, et al v. Allstate, et al (Case No.: 1:15-cv-00696)

Dear Sirs and Madam:

I have been advised by Judge Richard J. Arcara who presided over the above-referenced action, that it has been brought to his attention that during the time the case was assigned to him, he or his spouse owned stock in Allstate Corp. This stock ownership would have required recusal under the Code of Conduct for United States Judges. Although the only actions taken by Judge Arcara related to referring the matter to a magistrate judge and approving stipulations of discontinuance, and the stock ownership neither affected nor impacted any decisions he made, Judge Arcara has directed that I notify the parties of this conflict.

Advisory Opinion 71, from the Judicial Conference Codes of Conduct Committee, provides the following guidance for addressing disqualification that is not discovered until after a judge has participated in a case:

[A] judge should disclose to the parties the facts bearing on disqualification as soon as those facts are learned, even though that may occur after entry of the

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decision. The parties may then determine what relief they may seek and a court (without the disqualified judge) will decide the legal consequence, if any, arising from the participation of the disqualified judge in the entered decision.

Although Advisory Opinion 71 contemplated disqualification after a Court of Appeals oral argument, the Committee explained “[s]imilar considerations would apply when a judgment was entered in a district court by a judge and it is later learned that the judge was disqualified.”

With Advisory Opinion 71 in mind, you are invited to respond to Judge Arcara’s disclosure of a conflict in this case. Should you wish to respond, please submit your response directly to me on or before November 29, 2021. Any response will be considered by another judge of this court without the participation of Judge Arcara.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Mary C. Loewenguth", with a long horizontal flourish extending to the right.

Mary C. Loewenguth
Clerk of Court